



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/826,109  | 04/04/2001  | Fumihiko Nishio      | 7217/64311          | 2753             |
| 7590  | 09/19/2005  |                      | EXAMINER            |                  |
| JAY H. MAIOLI<br>Cooper & Dunham LLP<br>1185 Avenue of the Americas<br>New York, NY 10036 |             |                      | ZHONG, CHAD         |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2152                |                  |

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/826,109             | NISHIO ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Chad Zhong             | 2154                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 June 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

67

## OFFICE ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/13/2005 has been entered.
  
2. Claims 1-9 are presented for examination. In amendment A, filed on 6/13/2005:  
Claims 1, 3, 5, 6, 7, 8, 9 are amended.  
Claim 2 is cancelled.  
Claims 4 is previously presented.
  
3. It is noted that although the present application does contain line numbers in specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

### *Claim Rejections - 35 USC § 112, second paragraph*

4. Claims 1, 5, 6, 7, 8, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. The following lacks antecedent basis:
    - i. the user of the delivery designating means – claim 1, line 14
  - b. The claim language in the following claims is not clearly understood, rendering the claims indefinite:

i. As per claim 1, line 12; claim 5, lines 10-11; claim 6, lines 17-18; claim 7, lines 16-17; claim 8, lines 15-16; claim 9, line 14-15, it is not clearly understood what is meant by "delivery condition data", does the Applicant mean "transmission band" and "transmission medium"?

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

5. Claims 1, 3-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Colby et al. (hereinafter Colby), 6,625,643.

6. As per claim 1, Colby teaches an information providing apparatus for delivery of content data, comprising:

content data input means for operation by a user to input content data (Col. 27, lines 65 – Col. 28, lines 17, the administrators input commands as to how to schedule the various requests made by end users and publishers);

storing means for storing the content data provided by the content data input means (Col. 28, lines 1-5, wherein the administrators will enter reservation commands, these commands will be stored and interpreted by the scheduler); and

delivery designating means for designating a delivery condition set by the user including one of a transmission band (the transmission band is the capacity band as allocated by the administrator, see for example, Col. 27, lines 31-37; Col. 28, lines 1-18, the Publisher users can potentially be the administrator, Col. 22, lines 17-43) and a transmission

Art Unit: 2152

medium (Col. 28, lines 1-25; Col. 23, lines 23-26; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45) for delivering the content data; and

a communication control unit (the scheduler is the control unit, Col. 28, lines 5-10) for receiving delivery condition data necessary for determining the delivery condition designated by the user of the delivery designating means from a bi-directional network (Col. 28, lines 5-30, wherein the administrator input parameters are the delivery conditions, they are being sent to the scheduler for appropriate scheduling of the content delivery, furthermore, the network itself in Colby is bi-directional, takes the input from users and manipulates the output delivery to users) and supplying the delivery condition data to the delivery designating means (the system will schedule an appropriate time for the content delivery, see for example, Col. 29, lines 15-27).

7. As per claim 3, Colby teaches the information providing apparatus as set forth in claim 1, wherein the data necessary for determining the delivery condition is a size of an audience for the content data delivered (Col. 5, lines 25-30, wherein the maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45).

8. As per claim 4, Colby teaches the information providing apparatus as set forth in claim 1, wherein the data necessary for determining the delivery condition is a delivery cost (Col. 5, lines 25-30, wherein the delivery cost is in terms of bandwidth; Col. 27, lines 30-35, comparing free or paid events).

9. As per claim 5, Claim 5 is rejected for the same reasons as rejection to claim 1 above.

10. As per claim 6, the claim is rejected for the same reasons as claim 1 above. In addition,

Colby teaches a delivering apparatus for delivering content data, comprising:

first communicating means for receiving content data (content data here are the administrator commands to control the scheduler, see Col. 28, lines 1-18) provided from an information provider including a delivery condition (administrator provides the delivery condition, Col. 28, lines 1-18) including one of a transmission band (Col. 28, lines 5-18) and a transmission medium set by a user of the information provider (Col. 28, lines 1-25; Col. 23, lines 23-27, the Publisher users can potentially be an administrator, Col. 22, lines 17-43; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45);

storing means for storing the content data (the content data are stored in the form of webpages on the server, Col. 28, lines 20-30; commands from the administrator as stored and interpreted by the scheduler, Col. 28, lines 1-5);

transmitting means for delivering the content data to a receiving terminal unit (Col. 28, lines 15-20; Col. 27, lines 31-37);

second communicating means for receiving user profile information from the receiving terminal unit (Col. 26, lines 30-35, wherein publishers have login and password, or an account, further, the account can be an administrator account, see for example, Col. 22, lines 25-43);

profile storing means for storing the user profile information (Col. 22, lines 25-43);

charging process controlling means for calculating a cost corresponding to the delivery of the content data (Col. 26, lines 24-29, lines 40-45; Col. 27, lines 30-35); and

a communication control unit for receiving delivery condition data necessary for determining the delivery condition designated by the user from a bi-directional network (the scheduler is the control unit, Col. 28, lines 5-10; Col. 28, lines 5-30, wherein the user input parameters are the delivery conditions, they are being sent to the scheduler for appropriate scheduling of the content delivery, furthermore, the network itself in Colby is bi-directional, takes the input from users and manipulates the output delivery to users)

band controlling means for controlling a band used for delivering the content data (Col. 28, lines 5-18) based on the delivery condition set by the user of the information provider, (Col. 28, lines 1-18)

wherein the charging process controlling means pre-calculates a size of an audience for a content corresponding to the user profile information (Col. 5, lines 25-30, wherein the maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45), calculates the cost corresponding to the delivery of the content data (Col. 27, lines 30-35; Col. 28, lines 5-10), and informs an information providing apparatus of the cost (Col. 28, lines 5-20, wherein the cost of delivery comprising of calculation of availability of bandwidth requirements, the cost of the delivery is displayed to the administrators).

11. As per claim 7, Colby teaches a delivering apparatus for delivering content data, comprising:

first communicating means for receiving content data (content data here are the administrator commands to control the scheduler, see Col. 28, lines 1-18) provided from an information provider including a delivery condition (administrator provides the delivery condition, Col. 28, lines 1-18) including one of a transmission band (Col. 28, lines 5-18) and a transmission medium set by a user of the information provider (Col. 28, lines 1-25; Col. 23, lines 23-27, the Publisher users can potentially be an administrator, Col. 22, lines 17-43; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45);

storing means for storing the content data (the content data are stored in the form of webpages on the server, Col. 28, lines 20-30; commands from the administrator as stored and

interpreted by the scheduler, Col. 28, lines 1-5);

transmitting means for delivering the content data to a receiving terminal unit (Col. 28, lines 15-20; Col. 27, lines 31-37);

second communicating means for receiving user watching/listening history from the receiving terminal unit (the administrators is able to view the condition of the network from the administration interface located in the scheduler, see Col. 28, lines 1-5);

watching/listening history storing means for storing the user watching/listening history (Col. 28, lines 1-5);

charging process controlling means for calculating a cost corresponding to the delivery of the content data (Col. 26, lines 24-29, lines 40-45; Col. 28, lines 5-10; Col. 27, lines 30-35); and

a communication control unit for receiving delivery condition data necessary for determining the delivery condition designated by the user from a bi-directional network (the scheduler is the control unit, Col. 28, lines 5-10; Col. 28, lines 5-30, wherein the user input parameters are the delivery conditions, they are being sent to the scheduler for appropriate scheduling of the content delivery, furthermore, the network itself in Colby is bi-directional, takes the input from users and manipulates the output delivery to users); and

band controlling means for controlling a band of a network used for delivering the content data (Col. 28, lines 1-18) based on the delivery condition set by the user of the information provider (Col. 28, lines 1-18),

wherein the charging process controlling means pre-calculates a number of audiences for the content data corresponding to the watching (Col. 5, lines 25-30, wherein the maximum amount of clients the system can handle; additionally, the amount of bandwidth available to a particular broadcast is directly proportional to the amount of users the publishers wish to reach, the scheduler system must adjust to this variable parameter accordingly to ensure proper bandwidth is allocated, see Col. 27, lines 30-45);

listening history, calculates the cost corresponding to the delivery of the content data, and informs an information providing apparatus of the cost (Col. 27, lines 30-35; Col. 28, lines 5-20, wherein the administrator is informed of the cost of broadcasting data).

12. As per claims 8-9, Claims 8-9 are rejected for the same reasons as rejection to claims 6-7 above respectively.

#### *Response to Arguments*

13. Applicant's remarks filed 06/13/2005 have been considered but are found not persuasive in view of the new grounds of rejection necessitated by Applicant's amendment.

14. In the remark, the Applicant argued in substance that Colby fails to disclose or suggest "designating a delivery condition set by the user including one of a transmission band and a transmission medium for delivering the content data".

In response to Applicatn's arguments, Examiner asserts that Colby teaches the users designating the capacity bands as part of the parameters sent to the scheduler, where publishers designation of free event results in scheduler limiting system bandwidth, see Col. 27, lines 31-37; Col. 28, lines 1-18; additionally, the transmission medium are the different paths designated by users to deliver data packets , see for example, Col. 23, lines 20-30; Col. 19, line 65 – Col. 20, line 2; Col. 29, lines 45 – Col. 30, lines 5; Col. 30, lines 40-45.

#### *Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art with respect to "INFORMATION PROVIDING APPARATUS, INFORMATION PROVIDING METHOD, DELIVERING APPARATUS, AND DELIVERINGMETHOD".

Art Unit: 2152

- i. US 6405239 Addington et al.
- ii. US 6446108 Rosenberg et al.
- iii. US 6219700 Chang et al.
- iv. US 6512754 Feder et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BURGESS, GLENTON B can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CZ  
September 7, 2005

A handwritten signature in black ink, appearing to read "N. ElHady". The signature is written in a cursive style with a vertical line extending downwards from the end of the "y".